

U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 08Jun2001

CASE NO.: 2001-STA-00019

In the Matter of

DONALD GIBSON

Complainant

and

**ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH**

Prosecuting Party

v.

**BERKSHIRE SPRINGS, INC., TARA B. WHITE
and DALE C. BOSWORTH, SR.**

Respondents

**DECISION AND ORDER APPROVING SETTLEMENT
AGREEMENT AND DISMISSING COMPLAINT**

In this proceeding which arises under the provisions of section 405 of the Surface Transportation Assistance Act, 49 U.S.C. §31105 ("the Act"), the parties have filed a joint motion for approval of settlement agreement, and the Prosecuting Party has, pursuant to the parties' settlement agreement, filed a motion to dismiss complaint.

The Act and implementing regulations provide that a proceeding under the Act may be ended prior to entry of a final order by a settlement agreement between the parties. 49 U.S.C. §31105(b)(2)(C); 29 C.F.R. §1978.111(d)(2). The Administrative Law Judge's role in reviewing the parties's settlement agreement is limited to ascertaining whether the terms of the agreement fairly, adequately and reasonably settle the Complainant's allegations that the Respondent violated the Act. *Ass't Sec'y & Zurenda v. Corporate Express Delivery Systems, Inc.*, ARB No. 00-041, OALJ No.

1999-STA-30 (ARB March 31, 2000) (*Zurenda*); *Champlin v. Florilli Corp.*, OALJ No. 1991-STA-7 (Sec'y May 20, 1992).

Pursuant to the requirements of the Act and the implementing regulations, I have carefully reviewed the terms of the parties' Settlement Agreement, and I have determined that it constitutes a fair, adequate and reasonable settlement of the complaint with one minor clarification. The Settlement Agreement contains a Release of Liability and Covenant not to Sue which could be expansively interpreted as a waiver by the Complainant of any future cause of action that he may have against the Respondent including a complaint of prohibited retaliation for having filed the complaint in this matter. Consequently, I have interpreted this provision of the Settlement Agreement as limited to the Complainant's right to sue in the future based on claims or causes of action arising out of facts occurring before the date of the settlement. *See Zurenda*, slip op. at 3.; *Webb v. Numanco, L.L.C.*, ARB Case No. 98-149; OALJ Case Nos. 1998-ERA-27 *et al.* (ARB January 29, 1999), slip op. at 3. *See also Alexander v. Gardner- Denver Co.*, 415 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

Accordingly, **IT IS HEREBY ORDERED** that:

- (1) the parties' Settlement Agreement is hereby approved; and
- (2) the above-captioned complaint is hereby dismissed with prejudice.

This approval of the Settlement Agreement and dismissal of the complaint constitutes the final order in this matter. *Pettit v. Des Moines Asphalt & Paving Co.*, OALJ No. 1996-STA-3 (ARB December 30, 1996).

A
DANIEL F. SUTTON
Administrative Law Judge

Camden, New Jersey